

REMARKS

This application, as amended herein, contains claims 1, 3-8, 10-13, 15-20, 36-46, and 48-54. Claims 2 and 4 have been canceled herein.

Claims 4 and 10-12 were objected to because they recite a temperature sensitive material. The Examiner stated that claim 1 does not include this limitation. These claims have been amended to overcome this objection. Thus, it is respectfully submitted that there is no basis to object to claims 4 and 10-12. Thus, it is respectfully submitted that the objection to claims 4 and 10-12 should be withdrawn.

Claims 1-3, 13, 18, 19, 20, 36, 48 and 51 - 54 were rejected under 35 U.S.C. 102(e) as being anticipated by Prusik et al. Further claims 1-2, 4-8, 14 and 15 were rejected under 35 U.S.C. 102(b) as anticipated by Matsunami et al. Claims 4-8 were rejected under 35 U.S.C. 103(a) as unpatentable over Prusik et al. in view of Dean. Claims 14-16 and 40-46 were rejected under 35 U.S.C. 103(a) as unpatentable over Prusik et al. in view of Cooley et al. Finally, claims 3 and 16-20 were rejected as unpatentable over Matsunami et al. in view of Cooley et al. These rejections are respectfully traversed.

Claim 1, as amended herein, recites a temperature sensitive display medium for displaying a first image within a first temperature range and a second image within a second temperature range, wherein at least one image provides

information about a condition of a product to which the display medium is attached. Claim 1 further recites at least two temperature sensitive zones, a first zone for displaying the first image, and a second zone for displaying the second image wherein the second zone is on top of the first zone so that the first zone and the second zone overlap. Support for this amendment may be found in the specification on page 12, in paragraph [0071].

Applicant's invention, as set forth in claim 1, thus provides a specific technical advantage, in that the condition of the product, based on its thermal history, is determined, and that space is saved by both images being disposed so one is over the other, and so that they overlap.

Since none of the prior art teaches or suggests this approach to saving valuable space on the display medium, which may have a limited area in which to display information, it is respectfully submitted that claim 1 is directed to patentable subject matter.

With respect to independent claims 18, 51 and 53, the central issue herein is that the Examiner has failed to give any weight to the nature of the information displayed. Instead, the Examiner has cited case law for the proposition that very little weight is attached to an intended field of use of a product. It is respectfully submitted that this case law refers to a prior art structure, where the claim recites merely, as an example, "for use in cooking". This case law is not pertinent to the issues presented herein.

The issue presented herein deals with a structure for displaying particular information, and the nature of the information displayed. Information displayed can and does define a different and unique structure. For example, it has been held that a digital computer programmed in a new and unobvious way is a physically different from the machine without the program, and is therefore patentable. In *re Bernhart*, 417 F.2d 1395, 1400, 163 U.S.P.Q. 611 (CCPA 1969). The court said "The fact that these physical changes are invisible to the eye should not tempt us to conclude that the machine has not changed."

In the instant case, the changes are in fact visible to the eye. The information has real value, and defines a different product, specifically one that has information thereon on how that product is to be processed. This is very similar to the programming of a digital computer where what the program provides is information on what the machine is to do next, or in successive steps.

In view of the above, it is again respectfully requested that the Examiner reconsider the position taken on all of the claims, giving due weight to the nature of the information presented, from the most general statement in claim 18, to the specific nature of this information in claims 36- 46 and 48. It is respectfully submitted that if due weight and consideration are given to the recitations of the nature of the information displayed in these claims, the Examiner, under existing case law, must find the claims to be directed to patentable subject matter. These remarks pertain to the rejections of claims 1-3, 13, 18, 19 20, 36,

48 and 51-54 (based on Prusik et al.), the rejection of claims 1-2, and 4-8, 10-12 and 15 (based on Matsunami et al.) and claims 3 and 16-20 (based on Matsunami et al. in view of Cooley et al.).

It is also respectfully submitted that claim 13 is patentable over the art of record. Claim 13 specifies one way in which the thermal history of a product to which the display medium is attached, may be determined. If the product has been exposed to a temperature that is inappropriate, as more fully discussed below, then the irreversible change in the display will provide an continuing indication of this having occurred, even if the temperature is again changed to one that would have been acceptable, had it been continuously maintained. The prior art does not teach or suggest this approach. The Examiner has relied on inherency with respect to Prusik et al. However, there is no certainty that the materials and the manner of their use would provide the alleged inherent property, and extrinsic evidence has not been provided, Continental Can Co. v. Monsanto, 20 U.S.P.Q.2d 1746. For this reason, and for the reasons set forth above with respect to claim 1, from which claim 13 depends, it is submitted that claim 13 is patentable over the art of record.

With respect to the rejection of claims 3 and 16-20, as unpatentable over the combination of Matsunami et al. in view of Cooley et al., it is again respectfully submitted that Cooley et al. adds nothing of significance to Matsunami et al. Cooley et al is directed to a tampered-

indicating and authenticating label. The thrust of Cooley et al. is to be certain that the label has not been tampered with or removed from an article to which it is attached. Cooley et al. does not teach or suggest a display medium as set forth in claim 1, from which claims 3, 16 and 17 depend, because Cooley et al. does not have overlapping images, one on top of the other. Further, Cooley does not teach an identifier being representative of information on how to further process a product, as set forth in claim 18. For the reasons set forth above, it is submitted that claims 3 and 16-20 are also patentable over the art of record.

Claims 36-50, which all depend either directly or indirectly from claim 1, present a number of features of Applicant's invention not shown or suggested in the art of record. It is noted that most of the features of Applicant's invention recited in these claims all take advantage of the unique property of the display medium having at least one image that is representative of the condition of the product, and images that overlap, with one image being on top of another to save space. Thus, information may be read, and the product may be efficiently processed in accordance with the condition represented by the information. For the reasons set forth above with respect to claim 1, and because of the specific recitation within each of these claims, it is submitted that claims 36-50 are all directed to patentable subject matter.

Claim 51 is directed to a temperature sensitive display medium for displaying a first image within a first temperature range and a second image within a second

temperature range, wherein at least one image provides information about a thermal condition history of a product to which the display medium is attached. The condition is indicative of how to further process the product in view of the thermal history. The display medium also includes at least one of the images provides identification of the product.

Thus, as noted above, but as more explicitly recited in claim 51, the prior thermal history of a product to which the display medium is attached is provided by one of the images. This provides information on how to further process the product. This is absolutely critical, for example in the case of certain foods, where if the food was thawed, and then again frozen, it would no longer be edible, because someone eating the food could become very ill as a result. Instead of being consumed, the product could be safely discarded. Alternatively, the image could provide information on current temperature and thus information on how to precisely cook the product would be available.

In view of the above, it is submitted that newly added claim 51 is patentable over the art of record.

Claim 52 depends from claim 51, and its recitations are similar to that of claim 13. For the reasons set forth above with respect to claim 51 and claim 13, it is respectfully submitted that claim 52 is directed to patentable subject matter.

Claim 53 is directed to a display medium comprising at least one image; and at least one identifier, wherein the at least one identifier is formed of a temperature sensitive material adapted to display the identifier within a first temperature range and to be indicative of a previous thermal condition. The identifier is representative of information on how to further process a product to which the display medium is attached based on the previous thermal condition. Thus, as noted above with respect to claim 51, the prior thermal history of a product to which the display medium is attached is provided by one of the images. This provides information on how to further process the product. As noted above, this is absolutely critical in the case of certain foods, where if the food was thawed, and then again frozen, it would no longer be edible, because someone eating the food could become very ill as a result. Instead of being consumed, the product could be safely discarded.

In view of the above, and for the reasons set forth above with respect to claim 1, it is respectfully submitted that claim 53 is also directed to patentable subject matter.

Claim 54 depends from claim 53 and states that at least one identifier undergoes a change which is irreversible when the display medium is within a predetermined temperature range. For the reasons set forth with respect to claims 13 and 52, and for the reason set forth with respect to claim 53, it is respectfully

submitted that claim 54 is directed to patentable subject matter.

Reconsideration and allowance of this application are respectfully requested. In view of the allowable nature of the subject matter of all of the claims, if the Examiner cannot issue an immediate allowance, it is respectfully requested that the Examiner contact the undersigned to resolve any remaining issues.

A check in the amount of \$1,020 for a three-month extension of time is enclosed.

Respectfully submitted,

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